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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,420	07/31/2001	Keith L. Shaftel	005186.P002	4204
22850	7590	05/05/2006		EXAMINER
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			SMITH, JEFFREY A	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/919,420	SHAFTEL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jeffrey A. Smith	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 September 2005.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-31 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 July 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION**

***Response to Amendment***

The supplemental amendment filed September 19, 2005 has been entered and considered.

Claims 1-31 are pending.

An action on the merits follows.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Savage, Terry: "Value of Diamonds is not set in Stone", Chicago Sun-Times, Chicago IL, Dec 20 1998 [5XS Edition], Section: MONEYLIFE, pg 69 (hereafter: "Savage") in view of Noble, Peter M. et al.: "Industrial Pricing: Theory and Managerial Practice", Marketing Science, v18, n3, Special

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Issue on Managerial Decision Making, 1999, pp. 435-454

(hereafter "Noble et al.") and Abe et al. (US 2002/0046128 A1).

Savage reports on the value and pricing of diamonds. Since each individual diamond has its own unique characteristics, there is no "correct" price for an individual stone. Savage describes the "Rapaport Diamond Report" which is considered the "pricing bible" of the industry. It should be noted that The Rapaport Report represents "wholesale" prices of unset stones traded between dealers. Such prices are "price levels" which offer a base price which may then be adjusted according to specific attribute values for each individual stone. At least one of these attributes has a subjective value. Four example attributes are discussed as being: clarity, color, cut, and carat-weight. Savage reports that each of these attributes may contribute to the total value of a particular diamond.

Accordingly, from the base price, a competitive price of an individual diamond may be arrived at using, first, a subjective value (such as color, for example) to determine a competitive price and then, using at least one of the other additional attributes (such as cut grade, for example) to determine a second competitive price.

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Savage does not report on a sale price determination for the same individual stone.

Noble et al. teaches a "cost-based" pricing strategy in which price may be determined based upon the cost to bring an item to market plus the desired margin or "mark-up".

It would have been obvious to one of ordinary skill in the art to have compared the competitive price (which is ultimately determined from a base (or wholesale) price (of the type provided in price levels by the Rapaport Diamond Report) plus modifications (up or down) to the base price as governed by both subjective attribute values (such as color) and objective attribute values (such as cut grade)) to a sale price as determined using a "cost-plus" pricing determination (as taught by Noble et al. in order to have assessed whether the individual stone will nearly meet or exceed the merchant's cost to bring the stone to market plus the merchant's desired "mark-up").

The combination of Savage and Noble et al. does not provide that the combined method is computer-implemented and that the product for sale is displayed on a web site at a display price (based on the sale price and competitive price and the difference between the sale price and competitive price).

Abe, in an automatic pricing method and device (see par. 0002), teaches that an item display unit may be implemented in a

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web-based e-commerce environment (par. 0020) in which the item display unit determines the items that should be displayed in the web marketing system (par. 0024) based upon input such as subjective and objective attribute information etc... (par. 0021).

It would have been obvious to one of ordinary skill in the art to have modified the combination of Savage and Noble et al. to have further been implemented in a web-based environment in order to have determined items that should be displayed so as to automatically maximize the profits of a seller in an electronic commerce system (par. 0009).

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-31 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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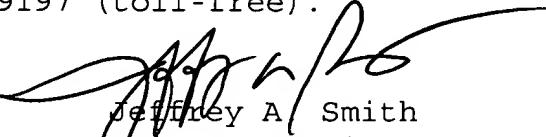
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is (571) 272-6763. The examiner can normally be reached on M-F 6:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert M. Pond can be reached on 571-272-6760. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey A. Smith  
Primary Examiner  
Art Unit 3625

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